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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/606,910	06/29/2000	Uwe Karsten	0107-027P	7839

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EXAMINER

RAWLINGS, STEPHEN L

ART UNIT PAPER NUMBER

1643

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/606,910	Applicant(s) KARSTEN ET AL.	
	Examiner Stephen L. Rawlings, Ph.D.	Art Unit 1643	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires _____ months from the mailing date of the final rejection.
b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) They raise new issues that would require further consideration and/or search (see NOTE below);
(b) They raise the issue of new matter (see NOTE below);
(c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 8-13 and 15-18.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).


10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. Other: _____.


Stephen L. Rawlings, Ph.D.
Examiner
Art Unit 1643

Continuation of 3. NOTE: The proposed amendment, if entered, would add new claims without canceling a corresponding number of finally rejected claims. The entry of the new claims would require further consideration and/or search and would raise the issue of new matter, since, in particular, proposed claim 26 recites, "synthetic peptide consisting of at least two, but no more than 6, repeats of the amino acid sequence of SEQ ID NO: 2, which appears to find no written support in the specification, including the claims, as originally filed.

Continuation of 11. does NOT place the application in condition for allowance because: To some extent the request for reconsideration is predicated upon entry of the proposed amendment, which has not been entered; accordingly, to that extent, the grounds of that request are moot. Otherwise, Applicant has argued that written support for the language of claims 8-13 and 15-18 is found in the specification, including the claims, as originally filed, such that the claims properly benefit from the earlier filing date of the German foreign priority document. In particular, Applicant has argued that written support for the language of claims 8-13 and 15-18 is found in original claim 1, of which an English translation has been provided as an attachment to the amendment. As indicated by the translation, claim 1 is directed to "synthetic peptides of a different length"; however, contrary to Applicant's assertions original claim 1 does not provide written support for a peptide consisting of 7-21 amino acids of SEQ ID NO: 1, as presently recited in claim 8; nor does original claim 1 provide written support for synthetic peptides consisting of multiple repeats, as presently recited in claim 9. The reasons that the remaining original specification fails to provide proper and sufficient written support for the present claim language are provided in the preceding Office action mailed October 20, 2005, beginning at page 6. Accordingly, because the present claim language finds insufficient written support in the specification, including the claims, as originally filed, that language is deemed new matter; therefore, the instant claims do not properly benefit from the earlier filing date of the foreign priority document, and as such it is proper to maintain the rejections of the claims over the prior art.


STEPHEN RAWLINGS